UNITED STATES OF AMERICA BEFORE THE NATIONAL LABOR RELATIONS BOARD SAN FRANCISCO BRANCH OFFICE DIVISION OF JUDGES

WAL-MART STORES, INC.

and Case 28-CA-16832

UNITED FOOD AND COMMERCIAL WORKERS UNION, LOCAL UNION 99R, CLC

and

Cases 28-CA-17774 28-CA-17774-2

UNITED FOOD AND COMMERCIAL WORKERS INTERNATIONAL UNION, CLC

Paul Irving, Esq., Phoenix, AZ, for the General Counsel.

Steven D. Wheeless, Esq., Phoenix, AZ, for the Respondent.

David Rosenfeld, Esq., and Caren P. Sencer, Esq., Alameda, CA, for the Charging Parties.

SUPPLEMENTAL DECISION

Statement of the Case

Gregory Z. Meyerson, Administrative Law Judge. On February 28, 2003, following a 13 day hearing, I issued a decision in the above captioned matters. In that decision, I found that Wal-Mart Stores, Inc. (the Respondent, the Employer, or Wal-Mart) had, by it actions, violated Section 8(a)(1) and (3) of the National Labor Relations Act (the Act), as alleged in certain paragraphs of a consolidated complaint issued by the Regional Director for Region 28 of the National Labor Relations Board (the Board). I recommended to the Board that Wal-Mart be required to take certain remedial and other action in order to remedy its unfair labor practices. I also found that Wal-Mart had not violated the Act as alleged in other paragraphs of the complaint, and recommended that those portions of the complaint be dismissed. Both the General Counsel and Wal-Mart filed timely exceptions with the Board to my decision. However, no exceptions were filed by the United Food and Commercial Workers Union, Local Union 99R, CLC or by the United Food and Commercial Workers International Union, CLC, the Charging Parties in these matters (the Charging Parties or the Unions).

In an Order Severing and Remanding and Notice to Show Cause issued on July 6, 2005, the Board, among other actions, granted a motion by counsel for the General Counsel and severed Case 28-CA-17141 from the other charges in the consolidated complaint that were heard at trial. Further, the Board's Order directed the parties to address the issue of whether the Respondent's production of certain documents and files in an unrelated State court proceeding should not be found to constitute a waiver of the attorney-client privilege.

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In my original decision in this case, I found that certain documents maintained by the Respondent and referred to as the "Remedy System" documents were protected from disclosure through a Subpoena *Duces Tecum* as attorney-client privileged information. During the trial, I orally granted a motion from the Respondent and revoked in part subpoenas issued on behalf of the General Counsel and Charging Parties seeking Remedy System documents. Thereafter, I reiterated that ruling in writing in my original decision. As one of his exceptions to the Board, counsel for the General Counsel challenged my ruling as to the attorney-client privilege.

In an Order Remanding dated September 29, 2006, the Board addressed the attorney-client privilege issue. *Wal-Mart Stores, Inc.*, 348 NLRB No. 46 (2006). The Board concluded that it was "unnecessary for [it] to decide whether [my] ruling was correct," because by its actions in the State court proceeding [that being its production of the Remedy System documents], the Respondent [could] no longer assert the privilege that it once claimed over the Remedy System documents...."

The Board, having found that the attorney client privilege was "waived," concluded that it was "entirely possible that the [Remedy System] documents and files contain information relevant to the exceptions that the General Counsel and the Respondent filed with the Board." Accordingly, the Board reversed my ruling quashing the subpoenas, and remanded this proceeding to the undersigned "to reopen the record to receive relevant evidence and make findings with respect thereto.... and tak[e] further appropriate action."

Supplemental Evidence

Pursuant to the Board's remand order, I conducted a supplemental hearing in this case in Phoenix, Arizona, on November 30, 2006 and February 1, 2007. All parties appeared at the supplemental hearing, and I provided them with the full opportunity to participate, to introduce relevant evidence, to examine and cross-examine witnesses, and to argue orally and file briefs. Base upon the record, my consideration of the briefs filed by counsel for the General Counsel, counsel for the Charging Parties, and counsel for the Respondent, and my observation of the demeanor of the witnesses,² I now make the following findings of fact and conclusions of law.³

¹ At the supplemental hearing, I granted counsel for the General Counsel's motion, opposed by counsel for the Charging Parties, to remove Case Number 28-CA-17141 from the combined caption of these matters, as the Board had severed that case from the others remaining before me.

² The credibility resolutions made in this decision are based on a review of the testimonial record and exhibits, with consideration given for reasonable probability and the demeanor of the witnesses. See *NLRB v. Walton Manufacturing Company*, 369 U.S. 404, 408 (1962). Where witnesses have testified in contradiction to the findings herein, I have discredited their testimony, as either being in conflict with credited documentary or testimonial evidence, or because it was inherently incredible and unworthy of belief.

I. The Subpoenaed Remedy System Documents

A. Compliance with the Subpoena

As was set forth in my original decision in this case, at the time of the events in question, the Employer utilized a "Union Hotline" system. This system was established so that managers throughout the country can report union activity to headquarters and, in return, receive guidance from labor relations specialists and legal advice from the Employer's legal team, both in-house and outside counsel. The flow of information back to store managers is referred to as the "Remedy System." (See p. 5, fn. 4 of ALJD.)

At the reopened hearing, I ordered the Employer to produce Remedy System documents for the period of January 1, 2000 through September 13, 2002, which were in any way related to the Charging Parties' union campaign or the union activity of any of Wal-Mart's employees at the Employer's store in Kingman, Arizona. Further, I directed the Employer to produce an appropriate employee, who could testify regarding the efforts to gather these documents, and the sources from which they were obtained. Also, I directed the Employer to produce a witness who could testify substantively about the information contained in the Remedy System documents.

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Initially, when the parties discussed this issue, it was contemplated that the Employer would produce an employee from its Information Technology (IT) department, who could testify as to the efforts to gather the documents and the sources from which they were obtained. Further, the Employer indicated that the best witness to testify substantively about the documents was Vicky Dodson, currently a director of human resources for the Employer, who had testified at length at the original hearing about the events surrounding the organizational campaign.

However, the Employer did not produce an employee from its IT department. Rather, it offered the testimony of Cathy Davis, employed as a paralegal with the Employer's employment division. Ms. Davis had been given the assignment of gathering the subpoenaed Remedy System documents. She testified at length under examination by counsel for the General Counsel and to a lesser extent by counsel for the Unions and counsel for the Employer about her efforts to locate and assemble the subpoenaed documents. In my opinion, these efforts can only be described as exhaustive.

Davis testified that the Remedy System documents are created and maintained in an electronic database known as the "Info-trac." She queried that database for all Kingman related Remedy System reports for the relevant time period and produced all such records. They were admitted into evidence as General Counsel exhibit 50, consisting of 84 pages. In an effort to locate any other related relevant documents, she interviewed 15 individuals who had been employed by the Employer in the labor relations department during the time period in question. She asked them to search their individual computer hard-drives and their individual hard-copy files for any relevant documents. Davis testified that she personally reviewed over "ten thousand" documents on the Employer's labor relations general electronic server and produced all responsive documents.

³ Counsel for the General Counsel's unopposed Motion to Correct the Record is hereby granted. The Record is corrected as is reflected in said Motion, which is admitted into evidence as GC. Ex. 57.

As testified to by Davis, in May of 2005, the FBI and the U.S. Attorney, apparently pursuant to a subpoena in a criminal case, removed all the hard-copy labor relations files from the Employer's labor relations library. Therefore, those files were no longer available for Davis to search.⁴ In any event, she testified that over 40 hours of her time were devoted to the search for the subpoenaed documents. In all, she was able to produce a significant number of documents, which consisted of not only the Remedy System documents themselves, but also summaries of those documents. (GC. Ex. 50-55.)

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I found Ms. Davis to be a conscientious, credible witness. She clearly made an exhaustive search for any Remedy System and related records connected with the organizing campaign for the period of time in question. Her credibility was not seriously challenged by any party, and there was absolutely no basis for concluding other than her testimony was credible.

While counsel for the General Counsel does not challenge Davis' credibility, he strenuously questions the adequacy of the Employer's production of Remedy System documents. He is of the belief that Davis was not competent to make an adequate search for the subpoenaed documents, and that instead of Davis, a more "appropriate employee" from the IT department should have been produced, as "custodian" of the documents. It is his position that the Employer has not fully complied with the subpoena and that, therefore, the hearing should be reopened for the testimony of a "competent" witness regarding the production of the Remedy System documents. Further, he requests that the undersigned order the production of the subpoenaed documents in "electronic format," as that is how they are apparently stored.

The production of records pursuant to any subpoena *duces tecum* naturally requires that the records be accompanied by a competent witness, who can testify about the gathering of the records, as obviously, the records can not speak for themselves. Such an individual is frequently referred to as the "custodian" of the documents. However, in fact the person who accompanies the records is rarely the physical custodian of the documents. I am unaware of any case authority as would require the party whose records are subpoenaed to produce the "most" knowledgeable person possible. An employer must, of course, make a good faith effort to comply with the subpoena. I am convinced that this Employer has done so.

In fact, Ms. Davis may have been the most appropriate person to have accompanied the records. She is an intelligent, articulate paralegal, who spent in excess of one full work week searching for and gathering the subpoenaed records. Even assuming for arguments sake that she was not initially knowledgeable about the Remedy System and related documents when she was first assigned the job of locating the subpoenaed records, she was undoubtedly extremely knowledgeable when she completed the task. Contrary to the arguments of counsel for the General Counsel, there is no evidence that any employee in the IT department would have been more knowledgeable or more appropriate as a witness than Ms. Davis.

There is no requirement that a subpoenaed party produce records in an electronic format, even if the documents were stored in such a fashion. The Employer has produced the Remedy System and related records in printed hard copy form. Under the circumstances, this is certainly reasonable. Counsel for the General Counsel apparently wants to see the records in an electronic format because he is skeptical that the Employer is fully complying with the

⁴ In his post-hearing brief, counsel for the Unions requested that the hearing be continued until such time as the files subpoenaed and removed by the FBI and U.S. Attorney could be returned to the Employer and, as relevant, produced for this proceeding. I will address counsel's request later in this decision.

subpoena. Counsel's skepticism may never be satisfied when it comes to this Employer. In any event, satisfying counsel's skepticism is not the standard required. What is required is that the Employer have made a good faith effort to comply with the subpoena and, in fact, be in substantial compliance with the subpoena, to the extent that is possible. Having heard Ms. Davis' testimony, and well as that of the subsequent witness Vicky Dodson, I am of the view that the Employer has done so.

Accordingly, I am reiterating the ruling that I made at the supplemental hearing, and I am declining to reopen the hearing yet again for the purpose of requiring the Employer to produce an employee of its IT department and/or to require the Employer to produce the subpoenaed documents in an electronic format. I find that the Employer has complied with the subpoena to the extent required by the Board's Order Remanding.

B. Contents of the Subpoenaed Documents

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As noted above, Vicky Dodson testified substantively about the contents of the Remedy System and related documents. She testified at length under examination by counsel for the General Counsel, and briefly under questioning by counsel for the Unions. At the original hearing in this case, I found Ms. Dodson to be an intelligent, articulate, sophisticated individual, who was a well-trained labor relations professional. (See p. 10 of ALJD.) As I did at the earlier hearing, I continue find her credible. She is a sincere, thoughtful witness who testifies candidly and truthfully without trying to embellish or exaggerate on behalf of her employer.

I have carefully reviewed each page of the subpoenaed Remedy System and related documents. (GC. Ex. 50-55.) For the most part, the Remedy System documents were daily reports from Ms. Dodson or other members of her labor relations team from Arkansas or to a lesser extent other management representatives, made to the Employer's headquarters in Arkansas. As was represented by the Employer at the original hearing, the contents of these documents involved the Employer's efforts to defeat the Unions' organizing campaign. There were frequent references to various employees and their sympathies, either pro or anti union. However, rarely were employee names used, but rather descriptions such as what department they worked in or some other personal information were used as references. The Remedy System documents specifically portray the Employer's efforts to convince its employees in the Kingman, Arizona store that they do not need union representation. While the Employer's efforts are directed primarily towards the employees in the petitioned for TLE⁵ unit, there were also efforts made at various times to influence the store employees in general.⁶ Various management representatives, including Kingman store, regional, and headquarters employees are specifically named and their individual efforts to defeat the Unions are document.

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In general, I found the subpoenaed documents to be "anti-climatic." I saw nothing new or particularly revealing in the many pages of documents. While counsel for the General Counsel would likely argue that this must mean that the Employer is hiding more revealing documents, I conclude nothing of the sort. The documents are what they purport to be, and nothing more. I see no "smoking gun," as there are no expressed, overt, documented unfair labor practices in the many pages of subpoenaed records. Frankly, after reviewing the Remedy System and related documents several times, I am left with the impression that all the efforts on the part of the General Counsel to obtain these documents and the efforts in opposition by the

⁵ The acronym TLE stands for Tire, Lube, and Express.

⁶ The petitioned for unit of TLE employees was opposed by the Employer, which took the position that the only appropriate unit was that comprised of all Kingman store employees.

Employer have amounted to "Much Ado About Nothing." As to any implied references to unfair labor practices in the documents, the parties were free to argue such contentions in their respective post-hearing briefs.

C. The Subpoenaed Documents and the Outstanding Exceptions to the ALJ's Decision

The General Counsel and the Employer filed timely exceptions to my original decision in this case. The Unions, however, filed no exceptions. The General Counsel's one substantive exception concerned my conclusion that the transfer of Kingman store manager Mike Buckner was not made in response to employee complaints or to improve their working conditions in an effort to influence their votes.⁸ I dismissed this complaint allegation.

The Employer's remaining 5 exceptions concerned my finding that it had violated the Act by: 1. engaging in surveillance of its employees' union activity; 2. granting benefits and improved working conditions in order to discourage its employees from supporting the Local Union; 3. threatening its employees with a loss of merit raises for supporting the Local Union; 4. discriminatorily and disparately applying and enforcing its non-harassment policies to the detriment of employees who supported the Local Union; and 5. discharging and denying COBRA benefits to its employee Bradley Jones.⁹

As I have emphasized above, I was unimpressed with the substantive value of the subpoenaed material. My review of the Remedy System documents revealed no significant probative evidence that was not known by the parties at the time the original hearing was concluded. Both counsel for the General Counsel and counsel for the Employer appear to be "grasping at straws" in implying that information in the subpoenaed documents supports their respective positions on the outstanding exceptions to my decision. As far as I am concerned, the arguments they now raise in their respective post-supplemental hearing briefs as to Remedy System documents simply serve as an excuse for them to "rehash" all the old arguments that they made at the conclusion of the original hearing, or in their original briefs.¹⁰

In support of their respective positions on the outstanding exceptions, counsel for the Employer and counsel for the General Counsel use the Remedy System documents by way of conjecture and supposition. There was no significant probative evidence offered by either party in support of their positions that was not previously known. Both counsels are diligent in defense of their clients' interest, and they demonstrate a natural instinct to "leave no stone unturned." However, what is now offered as new probative evidence is nothing more than the illusion of such.

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⁷ A comedy by William Shakespeare first published in 1600.

⁸ The other exceptions filed by the General Counsel concerned my ruling that the Remedy System documents were protected from subpoena by the attorney-client privilege.

⁹ Originally, the Employer also filed an exception to my finding of a violation of the Act by its language in its Associates Benefit Book. However, that allegation in the consolidated complaint was subsequently settled in an agreement between the Employer and the General Counsel, with the Board ordering the charge covering that allegation severed from the remainder of the case.

¹⁰ In their post-supplemental hearing brief, counsels for the Charging Parties did not offer any specific Remedy System documents as evidence in support of, or against, any outstanding exception. However, in the next section of this decision, I will specifically address the positions taken by counsels for the Charging Parties.

The questioning of the two witnesses, Cathy Davis and Vicky Dodson, was limited by the undersigned to the issue of the adequacy of the production of the subpoenaed documents, and to the substantive issue concerning the exception to my finding that the transfer of store manager Mike Buckner did not constitute a violation of the Act. I heard no testimony from either witness, which would constitute significant probative evidence not previously known.

As no party has offered any new substantive, probative evidence based on the subpoenaed documents or the testimony of Cathy Davis or Vicky Dodson, I conclude that there is no basis for me to alter any of my findings of fact or conclusions of law as set forth in my original decision in this case. Accordingly, I hereby reiterate my recommended Order dismissing certain paragraphs in the consolidated complaint and finding that other paragraphs have merit and establish violations of the Act, as set forth in my original decision in this case dated February 28, 2003.

Counsel for the General Counsel vigorously objected to my ruling limiting his questioning of Vicky Dodson to only those matters relevant to the one outstanding exception filed by the General Counsel, that being the transfer of store manager Mike Buckner. I specifically precluded counsel for the General Counsel from questioning Ms. Dodson or other witnesses regarding any of the outstanding exceptions filed by the Employer. Counsel argued that this constituted a denial of due process, as such evidence was contemplated in the Board's Remand Order.

To begin with, it should be noted that at the supplemental hearing counsel for the Employer offered no evidence in support of any of his outstanding exceptions. The two witnesses were called by the General Counsel and counsel for the Employer asked them no substantive questions regarding any of the outstanding exceptions. Counsel for the Employer did indicate at the hearing his intention of arguing his position on the outstanding exceptions in his post-hearing brief, which he subsequently did.

As I have said, I did not find any significant probative evidence in either the subpoenaed material or the testimony of the two witnesses, which was not previously known. As such, there was no reason to allow further witness testimony. The Board's Remand Order directed me to "reopen the record to *receive relevant evidence* and make findings with respect thereto." (emphasis added.) While the Remedy System and related documents were admitted into evidence, the information contained therein was neither significant nor probative. Therefore, further inquiry regarding that evidence would not be relevant. In any event, I did not preclude any party from making any argument desired on the outstanding exceptions in respective posthearing briefs. I only precluded the parties from offering further witness testimony on matters that I concluded were not relevant under the provisions of the Remand Order.

As the administrative law judge conducting the hearing, I have the responsibility of managing the hearing. As such, I must decide whether further evidence is warranted. Based on the contents of the Remedy System and related documents, I decided that such further evidence was not warranted. This does not constitute a denial of due process.

Counsel for the Charging Parties and, to a lesser extent, counsel for the General Counsel seem to be of the opinion that this case should go on in perpetuity. However, I am of the belief that based on the Board's Remand Order the supplemental hearing was quite limited in its scope. Having given all parties the opportunity to view the subpoenaed documents, ultimately having received them into evidence, and having given the parties the opportunity to question two witnesses about those documents, due process was provided to the parties in accordance with the Board's Remand Order. Due process does not require that a party be

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permitted to question witnesses endlessly about irrelevant information. To have further protracted this proceeding would, in my opinion, have been an unwarranted waste of the time and resources of all parties.

II. The Unions' Arguments and Actions

For the reasons that I noted earlier, I believe the Board's Remand Order contemplated a rather limited supplemental hearing. After all, four years ago the parties spend 13 days litigating this case. At the time of the original hearing, the Charging Parties were represented by a different lawyer. Mr. Rosenfeld and Ms. Sencer were not involved in that earlier proceeding. In any event, based on certain statements made and positions taken by Mr. Rosenfeld at the supplemental hearing and in his post-hearing brief, I have come to the conclusion that the Charging Parties' "agenda" in this case is far removed from the limited hearing contemplated by the Board.

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Mr. Rosenfeld's feelings about this case, the Board, and the Employer were not subtly displayed. His remarks were direct and unambiguous. On the record, he referred to the Board as "the Bush Labor Board," the Agency as a "dying agency," and the Employer as a "terrorist." His interest in this case clearly did not include a speedy adjudication of the outstanding issues before the undersigned. As he candidly admitted, "I don't care if this case delays for three years because...if I delay three years, I'm likely to see another Clinton Board and I'll get a more successful reception to this case than I will before the current Bush Board and delay is only in our favor for that reason."

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As I informed Mr. Rosenfeld on the record, it is my duty to care about a speedy adjudication of these issues. The rights of all the parties required a resolution of these outstanding issues, which had originally been heard by the undersigned over four years ago. All parties suffer when "justice delayed is justice denied." That included the Employer's employees, most particularly Brad Jones, the discharged employee ordered reinstated with back pay by the undersigned. Further, I suggested to Mr. Rosenfeld that his interest seemed to be in creating a "cause celebre," to try the Employer for all the perceived wrongs ever committed against its employees, rather than to simply litigate the outstanding issues in this case. I informed him that I was not going to permit him to do this, and in so doing to turn the supplemental hearing into a "circus."

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On November 20, 2006, prior to the commencement of the supplemental hearing, Mr. Rosenfeld issued a subpoena duces tecum to the Employer seeking 52 separate document categories. (CP. Ex. 5, subpoena no. B-468066.) The Employer filed a timely petition to revoke that subpoena. (CP. Ex. 5.) In his petition, counsel for the Employer refers to the Union's subpoena as a "blunderbuss." I agree with that characterization. The subpoena calls for the production of massive numbers of documents far outside the scope of the Board's Remand Order. Most of the documents it seeks are not even remotely related to the remaining issues before the undersigned. In my opinion it constitutes the ultimate "fishing expedition," apparently intended to obtain documents that can be used in other forums where the Unions and the Employer are engaged in litigation. I did not view the subpoena as a serious effort to obtain documents relevant only to the remaining issues in this case.

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¹¹ A blunderbuss in defined as, "an old-fashioned, short gun with large bore and flaring mouth, used for scattering shot at close range." See Funk & Wagnalls' Standard College Dictionary.

At the hearing, I granted the Employer's petition to revoke and quashed the Unions' subpoena as "incredibly burdensome, oppressive, and ...not particularly relevant." I informed Mr. Rosenfeld that he was not precluded "from issuing an additional subpoena that [was] more reasonable in scope and more germane to the issues before us." However, the Unions issued no further subpoena duces tecum.

Counsel for the Unions, Mr. Rosenfeld, did at one point in the hearing mention an interest in issuing a subpoena for Tom Coughlin, who was formerly the Employer's vice chairman. I characterized the idea of issuing a subpoena for Coughlin as "silly." Later, counsel for Unions, Ms. Sencer, again mentioned a desire to have Coughlin testify. I made it clear to counsel that I would not permit Coughlin to testify as such testimony would not be relevant under the parameters of the Board's Remand Order. Coughlin's involvement in this case, consisting of a trip to Kingman during the organizing campaign, was fully disclosed and discussed during the original hearing. Extensive testimony was taken about Coughlin's activities at the store, including his conversations with various managers and meeting with employees. No party sought to subpoena Coughlin during the original hearing. The Unions' interest in now having Coughlin testify is untimely and inappropriate. I have seen no evidence in the Remedy System and related documents as would constitute new probative evidence concerning Coughlin's involvement in the issues remaining before the undersigned.

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I expressed to Ms. Sencer my view that the Unions' interest in having Coughlin testify went "way beyond the confines of this hearing." My suspicions were reinforced by Ms. Sencer's request to have admitted into evidence a judgment in a criminal case filed against Coughlin in the U.S. District Court for the Western District of Arkansas, as well as numerous articles from various newspapers and periodicals concerning Coughlin's alleged criminal activity. Those documents were in no way related to the limited issues still before the undersigned pursuant to the Board's Remand Order. Instead, they were clearly intended to try and embarrass the Employer, and to suggest in some general way that the Employer was anti-union and engaged in a national campaign to defeat union organizing by committing unfair labor practices. I sustained counsel for the Employer's objection to the admission of these documents into evidence, as constituting irrelevant material.¹²

As part of the Unions' efforts to transform this case from its limited scope under the Remand Order into something with national implications, Counsel for the Unions, Mr. Rosenfeld, referred to the Employer as a recidivist employer, where a "broad remedy," a "nation-wide remedy was appropriate." He took the position that the Board's earlier severance of that portion of the consolidated complaint dealing with the Employer's Associates Benefit Book language was inappropriate, and that the Board should reverse itself. As counsels for the Unions make clear in their post-supplemental hearing brief, not only are they asking for a nation-wide notice posting, but they also request an intranet posting throughout the Employer's company-wide intranet system.

As I explained to all parties at the supplemental hearing, whatever nation-wide implications may have originally existed in this case were due only to the issue of the Employer's Associates Benefit Book language, which had been distributed to employees nationwide. However, that portion of the consolidated complaint was previously severed by the Board.

¹² At the request of counsel for the Unions, I agreed to have these documents placed in a rejected exhibit file to accompany the transcript as CP. Ex. 6-7.

¹³ I had previously ordered as part of a remedy for that specific violation of the Act a nation-wide notice posting. (See original ALJD.)

What remains before the undersigned is a Section 8(a)(1) and (3) case limited to those events that occurred at the Employer's store in Kingman, Arizona. While these are, of course, very significant and important issues to all parties and to the employees involved, they are issues that arose in the exclusive confines of the Unions' organizational campaign at the Kingman store. In my view, there is no basis for any extraordinary remedy, such as a nation-wide notice posting or a posting on the Employer's intranet system. Further, the unfair labor practices found by the undersigned do not warrant "broad remedial language." 14

The scope of the Board's Remand Order is limited. Those issues have been addressed in the supplemental hearing. As indicated above, I have concluded there is no basis to alter the findings of fact and conclusions of law that I issued in my original decision in this case. Further, I see no reason to alter the recommended remedy that I set forth in that decision. Accordingly, I decline to order the extraordinary remedy requested by the Unions.

In their post-supplemental hearing brief, counsels for the Unions ask that "the decision in this case [] be postponed until Wal-Mart produces the labor relations records which were taken by the FBI." Also, they state that "[t]he charging party is willing to wait until the labor relations records have been returned by the Federal Bureau of Investigation to Wal-Mart." This, of course, confirms the candid statements of Mr. Rosenfeld that he does not care about a delay in the case, as with a delay he hopes to "get a more successful reception to this case than I will before the current Bush Board and delay is only in our favor for that reason."

In my opinion, there is no basis for any further delay. Well over four years has passed since this case was originally heard. The Remedy System and related documents have been admitted into evidence. I saw nothing in those documents as would warrant altering my original findings of fact and conclusions of law. Further, there is no reasonable expectation that the documents seized by the FBI would, if available, produce any new relevant evidence.

At some point all litigation must end. No litigation goes on indefinitely. In my view, due process has been provided to all parties in this case, and all relevant available evidence has now been received and considered. No useful purpose would be served by further delay.

ORDER

On those issues that remain before me, I hereby reiterate the findings of fact and conclusions of law previously set forth by me in the original decision in this case. Further, I reiterate my recommended Order as set forth in that earlier decision, including the remedial provisions therein.

Dated at Washington, D.C., March 30, 2007.

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Administrative Law Judge

¹⁴ In any event, no party filed any exception seeking an extraordinary remedy, beyond what I recommended in my original decision. According, this issue is not contemplated by the Board's Remand Order, and is not technically before me.